

§ 252.12 Approval.

The Board may not approve an application for the payment of ODS until the Board has determined, in addition to other statutorily required determinations, that:

(a) The operation of the vessel in an essential service is required to meet foreign-flag competition and to promote U.S. foreign commerce;

(b) The vessel was built in the United States, or built foreign and determined to be eligible for ODS pursuant to the applicable law at the time it was built or acquired, and the vessel is documented under the laws of the United States.

(c) The applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed and number, and with the proper equipment required to enable him to operate in an essential service in such manner as may be necessary to meet competitive conditions and to promote U.S. foreign commerce;

(d) The applicant possesses the ability, experience, financial resources and other qualifications necessary to enable him to conduct the proposed operation of the vessel to meet competitive conditions and promote U.S. foreign commerce;

(e) The granting of the aid applied for is necessary to place the proposed operations of the vessel on a parity with the vessels of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of the Act;

(f) The vessel is of steel or other acceptable metal, is propelled by steam or motor, and is as nearly fireproof as practicable; and

(g) The vessel is constructed in accordance with plans and specifications approved by the Board and Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or approved by the Board and Navy Department as otherwise useful to the United States in time of national emergency.

[40 FR 43490, Sept. 22, 1975, as amended at 51 FR 40425, Nov. 7, 1986]

§ 252.13 Contract.

Upon approval by the Board of an application for ODS, the applicant and the United States may enter into an ODSA.

Subpart C—Operation**§ 252.20 Subsidized and nonsubsidized voyages.**

(a) *Subsidized voyages*—(1) *Minimum operation.* The operator shall operate each subsidized vessel for a minimum of 335 days each year in the worldwide carriage of bulk cargo in the U.S. foreign commerce and in the carriage of such cargo between foreign ports.

(2) *Commencement.* The first voyage shall commence at the time provided in the ODSA. All subsequent voyages shall commence at 0001 hours local time of the day following the day of termination of the previous voyage or, in the event that a reduced crew period follows such termination, at 0001 hours local time of the day following the day on which such reduced crew period terminates.

(3) *Termination.* A voyage shall terminate at 2400 hours local time:

(i) In a U.S. port, on the day of completion of (a) paying off the crew from foreign articles, (b) discharge of cargo at the last U.S. port of discharge, or (c) voyage repairs, whichever event occurs last;

(ii) In a foreign port, on the day (a) of completion of the discharge of cargo if the vessel loads cargo in such port of discharge, (b) prior to the day of commencement of loading cargo if the vessel departed its last port of cargo discharge in ballast;

(iii) In the case of special circumstances such as strike or lack of cargo activity, on the day approved by the Region Director upon request for a variance by the operator; or

(iv) On the final voyage, on the day provided in the ODSA for termination of the final voyage.

(4) *Periods of reduced crew, idleness, delay or lay-up*—(i) *Report by operator.* The operator shall report promptly to the Region Director any reduced crew period and any period of idleness, lay-

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up or delay occurring during or between voyages and the facts and circumstances relating to any such period.

(ii) *Region Director's finding.* The Region Director shall make a finding as to whether the period reported by the operator could have been avoided through the efficient and economical operation of the vessel and whether operating costs were reduced to a minimum in accordance with sound commercial practice. The Region Director shall, by means of a written report, promptly advise the operator and Contracting Officer of his finding.

(iii) *Contracting Officer's determination.* The Contracting Officer shall consider the Region Director's finding and shall determine what costs, if any, shall be subsidized during the period reported by the operator. The Contracting Officer shall promptly advise the operator of his determination in writing.

(b) *Nonsubsidized voyages in the U.S. foreign commerce.* (1) For any period of nonsubsidized service in the U.S. foreign commerce with respect to which the Board has granted prior authorization, a vessel shall go off subsidy after 2400 hours local time of the day of final discharge of cargo on the last subsidized voyage, or in the event the nonsubsidized voyage follows a subsidized period of reduced crew, idleness or lay-up, the vessel shall be deemed to be off subsidy at 0001 hours local time of the day following the day on which such period of reduced crew, idleness or lay-up terminates. The vessel shall continue in this nonsubsidized service until 2400 hours local time of the day of final discharge of the nonsubsidized cargo after which time the vessel will resume subsidized status. In the event the vessel makes consecutive nonsubsidized voyages during any such period of nonsubsidized service, it will remain in nonsubsidized status until completion of the final nonsubsidized voyage.

(2) For the purposes of meeting the requirements set forth in §§ 252.20(a) and 252.21, any such nonsubsidized voyage will be considered in the same manner as a subsidized voyage.

(3) Voyage reports shall be submitted upon the completion of each non-

subsidized voyage in the same manner as specified in § 252.23(a) and shall clearly indicate that the voyage is non-subsidized.

[40 FR 43490, Sept. 22, 1975, as amended at 43 FR 4858, Feb. 6, 1978; 51 FR 40426, Nov. 7, 1986]

§ 252.21 Essential service requirement.

(a) *Essential service.* A vessel which is not subject to a charter, or a vessel subject to a charter which does not exceed 5 years duration and which may not be extended beyond 5 years duration by exercise of an option either within the charter or contained in a separate agreement, shall be deemed to be in an essential service, within the meaning of section 211(b) of the Act. The operator shall be entitled to the full amount of ODS payable under the operator's ODSA (less any reduction with respect to the carriage of cargo in the coastwise or intercoastal trades, as described in section 605(a) of the Act). A vessel subject to a charter which exceeds 5 years duration, or which may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement), shall not be deemed to be in an essential service unless such charter has been approved by the Maritime Administrator pursuant to paragraph (b) of this section.

(b) *Approval of charters.* Charters of vessels that exceed 5 years duration or that may be extended beyond 5 years duration by exercise of an option (pursuant to provision of the charter or any separate agreement) shall be submitted to the Maritime Administrator for review and approval at least 30 days prior to execution of such charter. Charters exceeding 5 years shall be approved if the Maritime Administrator finds that the vessel will probably be employed during a substantial portion of its economic life in carrying a significant volume of cargo in the U.S. foreign commerce. The Maritime Administrator shall base this finding on all relevant considerations, including but not limited to, the terms of the charter, the business of the charterer and the normal tendency for bulk operators to participate substantially in U.S. foreign commerce. When the Maritime Administrator has made this finding with respect to a vessel, its operations during